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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,842	01/16/2004	Thomas Nikolaus	04-134	6965
34704 7590 11/19/2008 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
LOPEZ, FRANK D				
ART UNIT		PAPER NUMBER		
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11/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/758,842

Applicant(s)

NIKOLAUS, THOMAS

Examiner

F. Daniel Lopez

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 21 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 83-92 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 83-92 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

. Response to Amendment

Applicant's arguments filed August 21, 2008, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to claims 83-92 have been considered but are deemed to be moot in view of the new grounds of rejection. The new limitations include the claim language concerning the critical rotation speeds (claim 83 last 9 lines, see also 112 rejection).

Applicant argues that none of the references disclose limiting the rotation speed of the rotor to critical rotation speeds, so as to be easily braked. This is not quite what is claimed in the claims. What is claimed is that the rotation speed is limited to critical speeds, by connecting the output of the rotor to one or more of the pumps (claim 83 line 23-29). As discussed in the 112 rejection below, this is different from what is stated by the original specification. The examiner understands the original specification as including that the number of pumps influences the rotor speed, just not to limit the speed to a critical speed for braking purposes. The examiner also understands that the number of pumps in the prior art also influences the rotor speed; and so just claiming that the pumps influence the rotor speed would not be allowable.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 83-92 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 83 line 13-16 "selectively connecting the output from the rotor element of the plurality of hydraulic pumps as a function of the power output of the rotor element" is confusing. Is the output of the rotor connected **to** the pumps, rather than of the pumps? If the output is of the rotor element, then there is an antecedent basis problem, since only the pumps are claimed as having outputs (line 8).

In claim 83 last 5 lines "the control means selectively connects the output from the rotor with one or more of the plurality of pumps so that the rotation speed of the rotor is controlled to limit the rotations speed...to critical rotation speeds so as to be easily braked" is wrong. Although the rotor speed is controlled by the number of pumps connected to the rotor (e.g. paragraph 57), the only mention of a critical speed (singular, not plural) and braking is in discussing the restriction (e.g. paragraph 20)

In claim 84 line 3 and claim 88 line 3-4 "the plurality of loads" has no antecedent basis.

In claim 85 line 2, and claim 90 line 4, "the loads" has no antecedent basis.

In claim 92 line 2 "the plurality of pumps are of different loads" is confusing and appears to be wrong. The specification states that the pumps are provided in different power levels (e.g. paragraph 56). The examiner understands that this means the input to the pumps have different power levels such that a low power level is always associated with a first grouping of pumps, a medium power level is always associated with a second grouping of pumps, and a high power level is always associated with a third grouping of pumps, with possible other intermediate power levels always being associated with a specific grouping of pumps. What the examiner interprets claim 92 to mean is that each of the pumps are rated for different levels of power, such that, for example, the first pump can absorb 1 horsepower, whereas the second pump can absorb 2 horsepower. If this is what the claim is supposed to mean, it is wrong; since the specifications does not specify that the pumps have different power ratings, only that they are grouped into different power levels.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

Claim Rejections - 35 USC § 103

Claims 83, 85, 86, 88 and 89, inasmuch as they are definite, are rejected under 35 U.S.C. § 103 as being unpatentable over Lawson-Tancred in view of Bea. Lawson-Tancred discloses a wind power system comprising a wind machine having a rotor element (11) driving, through a gear transmission element (16), a plurality of pumps (17a-17d), control means for selectively connecting the output from one or more of the pumps to an output line, as a function of power output levels (based on rotor speed, column 4 line 2-9); wherein a pressure equalization container (21) is in the output line connecting the outlets of the pumps to a load, formed by converters (24, 25) driving respective generators (31, 32); wherein the rotor element is attached to a pylon attachment, which is rotatably attached (e.g. column 3 line 64-67) to a pylon (14); a monitoring unit (including switches 26-29) for selectively connecting the load to the output line (via valve 59) as a function of the output from the plurality of pumps; but does not disclose that the pumps are in the pylon attachment. It would appear that inherently a bearing would support the pylon attachment, since it rotates.

Bea teaches, for a wind power system comprising a wind machine, driving a plurality of pump (e.g. 30, 31), which drives a generator (e.g. 8a); wherein rotor elements (38) are attached to a pylon attachment (11), which is rotatably attached (e.g. column 4 line 5-10) to a pylon (14); that the pumps are in the pylon attachment and that the output line is passed through a coupling (73, column 5 line 52-6) so it is rotationally decoupled.

Since Lawson-Tancred doesn't disclose where the pumps are located, and Bea does, it would have been obvious at the time the invention was made to one having ordinary skill in the art to locate the pumps of Lawson-Tancred in the pylon attachment, with the output line passed through a coupling so its rotationally decoupled, as taught by Bea, since one having ordinary skill in the art would have been able to locate the pumps there and the resulting combination would predictable work in the same manner.

Claims 84, 87, 90 and 91, inasmuch as they are definite, are rejected under 35 U.S.C. § 103 as being unpatentable over Lawson-Tancred in view of Bea, as applied to claim 83 above, and further in view of Parkins. The modified Lawson-Tancred discloses all the elements of claims 84, 87, 90 and 91, including that there is a mechanical brake (36) for protecting the wind machine against overspeed conditions (column 5 line 29-35); but does not disclose that a plurality of individual wind power machines, each having a plurality of pumps, are connected to the loads; or that a controllable restriction element is in the output line for braking.

Parkins teaches, for a wind power system comprising a wind machine (10) having a rotor element (11) driving, through a gear transmission element (e.g. 43), a plurality of pumps (22); wherein a pressure equalization container (46) is in an outlet line connecting outlet lines of the pumps to a load, formed by a converter (48) driving a generator (50); that there are a plurality of individual wind power machines (fig 2), each having a plurality of pumps, connected to the loads; and that a controllable restriction element (111, e.g. column 8 line 12-13) in the output line for braking, for the purpose of protecting the wind machine against overspeed conditions (column 5 line 28-30).

Since the brake of Lawson-Tancred and Parkins are functionally equivalent in the wind power art, it would have been obvious at the time the invention was made to one having ordinary skill in the art to make the brake of Lawson-Tancred a controllable restriction element in the output line, as taught by Parkins, since one having ordinary skill in the art would have been able to carry out such a substitution and the resulting combination would predictable work in the same manner.

Since the modified Lawson-Tancred and Parkins are both from the same field of endeavor, the variation disclosed by Parkins would have been recognized in the pertinent art of Lawson-Tancred. It would have been obvious at the time the invention was made to one having ordinary skill in the art to include a plurality of individual wind power machines in the wind power system of the modified Lawson-Tancred, each having a plurality of pumps, connected to the loads, as taught by Parkins, for the purpose of generating more power.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM –4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez
Primary Examiner
Art Unit 3745
November 19, 2008